

Article - Environment

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§15–1107.

(a) (1) The Department may seek an order from the circuit court for the county in which the land or water resources is located authorizing the Department, its agents, employees, or contractors to enter upon the property adversely affected by past coal mining practices and any other property to have access to the affected property and to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects, if the Department makes a finding of fact that:

(i) Land or water resources have been adversely affected by past coal mining practices;

(ii) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(iii) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices:

1. Are not known, or not readily available; or

2. Will not give permission for the Department, its agents, employees, or contractors to enter on the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(2) The court shall consider whether the entry is a necessary exercise of the police power for the protection of the public health, safety, and welfare, and the actions of the Department under a court order shall not be construed as an act of condemnation of or trespass on property. The money expended for the work and the benefits accruing to any premises so entered shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry. This provision is not intended to create new rights of action or eliminate existing immunities.

(b) Within 6 months after completion of a project pursuant to this subtitle, the Department shall itemize the moneys expended by the Department and file a notarized statement prepared by an independent appraiser as to the increase in value of the land attributable to the reclamation project with the clerk of the circuit court for the county in which the affected land lies. The statement shall constitute a lien

upon the land for an amount equal to the increase in the value attributable to the project; provided that, no lien shall be filed:

(1) If the owner of the surface rights acquired the property prior to May 2, 1977, and neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation project;

(2) If the primary purpose of the reclamation project is to benefit the health, safety, and environmental values of the general public;

(3) If the cost of filing the lien exceeds the increase in the fair market value of the property as a result of the reclamation project; or

(4) If the reclamation project is necessitated by an unforeseen occurrence and the project does not significantly increase the fair market value of the property.

(c) The landowner may, within 60 days of the filing of the lien, petition the circuit court to determine the increase in the market value of the land as a result of the reclamation project.

(d) The lien provided in this section shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land. All funds received by the State pursuant to this section shall be credited to the Federal-State Reclamation Fund.

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